IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7846 OF 2006

M/s. Silver Line Enterprises. .. Petitioners.

vs.

State of Maharashtra

& Ors. . .. Respondents.

Mr. V.C. Ghosalkar for petitioners.

Mr. N.N. Bhadrashete for Respondent No. 4.

Mr. S.K. Chinchalikar, AGP.,for Respondent Nos. 1 to 3.

CORAM : A.P. DESHPANDE, J.

DATE : 18th December, 2006.

P.C.

. Leave to amend.

2. The petitioner is raising a challenge to the order of the Divisional Joint Registrar, Co-operative Societies dated 13.6.2006 whereby the petitioner's revision preferred under Section 154 came to be rejected on account of petitioner's failure to deposit 50% of the amount as is required under sub-section 2A of Section 154.

3. Rule. Rule is made returnable forthwith. Taken up for final hearing by consent of the parties.

4. The respondent no. 4 is a co-operative bank whereas the respondent no. 5 is a Special Recovery Officer of the bank. Respondent no. 1 is the State Government and respondent nos. 2 and 3 are the authorities of the State. The respondent no. 4 has advanced term loan and cash credit facility to the petitioner which was carrying on manufacturing activities. On account of non-payment of the due amount together with interest, the respondent nos. 4 and 5 approached the Respondent No. 2 with a view to obtain a recovery certificate under section 101 of the Co-operative Societies Act. The respondent no. 2 issued two recovery certificates in favour of the respondent no. 4. The certificates are dated 2.12.2004. The two certificates are for the sum of Rs. 37,93,374/- and Rs. 62,61,745/-. The respondent no. 4, on a request made by the petitioner seems to have taken steps to arrive at a compromised figure in regard to the repayment of loan and the same is reflected from the letter dated 20.5.2006 which is at Exhibit C to the petition. The said communication is addressed by the Bank to the present petitioner which reveals, that the compromise loan settlement in accordance with the norms laid down by RBI, the loan amount outstanding

against the petitioner as on 20.5.2006 was in the sum of Rs. 1,02,58,300/-. It is the case of the respondent nos. 4 and 5 that as the petitioner did not positively respond to the said communication by paying the amount, the respondent nos. 4 and 5 were constrained to take up recovery proceedings under rule 107 of the Rules. It is contended by the Bank that the Petitioner had expressed certain reservations in regard thereto and hence the respondent nos. 4 and 5 were constrained to initiate recovery proceedings by taking recourse to section 107 of the Co-operative Societies Rules. The respondent nos. 4 and 5 had advertised the sale of the property of the petitioner and the sale proceedings had reached half way when this petition came to be filed. According to respondent nos. 4 and 5 an advertisement was issued inviting tenders from the interested buyers and the highest tender received by respondent no. 4 and 5 is in the same sum of Rs. 1,28,00,000/-. It is undisputed and a categorical statement is made by the learned counsel for respondent nos. 4 and 5 that though the highest bid has been accepted the sale has not been confirmed and the sale certificate has not been issued. If this be the position then the highest bidder has not accrued any legal right, on account of his bid being the highest bid.

5. The petitioner by amending the petition has

questioned the legality and validity of the impugned order passed by the Divisional Joint Registrar dismissing the revision preferred by the petitioner under section 154, solely on the ground that the petitioner failed to deposit the amount as is required by sub-section 2A of Section 154 of the Act viz., 50% of the amount covered by the sale certificate. It is the case of the petitioner that though the petitioner did not have money when they filed the revision and did not comply with the requirement of section 2A of Section 154, today it is in a position to deposit not only 50% of the amount but the entire amount which the respondents 4 and 5 are in a position to receive from the highest bidder. A limited prayer is made that the petitioner's valuable right to seek adjudication of the issue involved in a revision is at stake and the petitioner should be given an opportunity to have a decision on merit in the revision that has been rejected by the revisional authority on account of non-payment of the 50% of the amount covered by the recovery certificates. The learned counsel for the petitioner makes a categorical statement that the petitioner is very much in a position to deposit a sum of Rs. 1,28,00,000/- and in addition to the said sum an amount of 5% of the auction price which is meant to compensate the auction purchaser as is required by sub rule 13 of Rule 107 of the Co-operative Societies Rules. The learned counsel

further makes a statement that the petitioner will deposit a sum of Rs. 1,02,00,000/- with the respondent nos. 4 and 5 together with 5% of the auction amount within a period of two weeks from today and shall also deposit a sum of Rs. 26 lacs in this Court within the above stated period of two weeks from today. In my view it would be in furtherance of cause of justice to restore the Revision on the following terms:-

> In the event, such deposit being made, which is in the sum of Rs. 1,28,00,000/- and 5% of the auction amount, the revision filed by the petitioner with the Divisional Joint Registrar, Co-operative Societies, Mumbai bearing no. 325 of 2006 shall stand restored. The revisional authority shall proceed to decide the revision in accordance with law as expeditiously as possible. It is made clear that all contentions are left open for the parties to be urged before the revisional court. It is further made clear that in the event if the petitioner fails to deposit the amount as directed by this order, within the time prescribed, this order shall stand revoked without any further reference to the Court and the parties shall stand restored to the position as they would be in the absence of this

order. It is also made clear that if the petitioner deposits a total of Rs. 1,28,00,000/- plus 5% of the auction amount, it shall be open for the petitioner to move the revisional court by an application seeking release of the property.

6. Rule is made absolute in above terms with no order as to costs.

(A.P. Deshpande, J.)